

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Baugh Analyst: Christy Keith Bill Number: AB 1799

Related Bills: See Legislative History Telephone: 845-6080 Amended Date: 03/06/2000

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Exclusion/Indemnification Received By Erroneously Convicted Persons

## SUMMARY OF BILL

This bill would amend existing law that requires the State Board of Control (BOC), where an individual has been erroneously convicted and incarcerated for a crime, to recommend to the Legislature that an amount be appropriated to indemnify the individual for the pecuniary injury of such errors. This bill would specify that the BOC is required to recommend an appropriation of \$100 a day, rather than the current amount of up to \$10,000.

This bill also would provide that the appropriation is not to be treated as gross income to the recipient under the Revenue and Taxation Code.

This analysis will address the bill only as it impacts the department and state income tax revenue.

## SUMMARY OF AMENDMENT

The March 6, 2000, amendment made a clarifying change.

This is the department's first analysis of the bill.

## EFFECTIVE DATE

This bill would be effective January 1, 2001, and apply to taxable years beginning on or after January 1, 2001.

## LEGISLATIVE HISTORY

AB 110 (Stats. 1999, Ch. 619) appropriated \$620,000 from the General Fund to Kevin Lee Green for a legislatively declared miscarriage of justice by which Mr. Green was unjustly convicted and incarcerated. AB 110 specified that the appropriation would be excluded from gross income for California personal income tax purposes.

## SPECIFIC FINDINGS

**Existing state law** provides that gross income includes all income from whatever source derived, including compensation, business income, gains from property, dividends, rents, interest, and royalties, unless it is specifically exempt.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

7/13/00

**Existing state law** provides that certain types of payments or amounts received are excluded from gross income, such as amounts received from certain death benefits, gifts and inheritances, compensation for injuries and sickness, qualified scholarships, educational assistance programs, and foster care payments.

**This bill** would amend existing law that requires the BOC, when an individual has been erroneously convicted and incarcerated for a crime, to recommend to the Legislature that the individual be appropriated an amount for the injury. This bill would specify that the BOC recommend an appropriation of \$100 a day for each day of incarceration served after conviction, rather than the current amount of up to \$10,000.

**This bill** would provide that the appropriation received by a claimant under this section of the Penal Code is not to be treated as gross income to the recipient under provisions of the Revenue and Taxation Code (R&TC).

#### Implementation Considerations

Implementation of this bill would not significantly impact the department.

#### Technical Considerations

The language specifying that the appropriation would be excluded from gross income also should be placed within the Personal Income Tax Law provisions of the R&TC. The attached amendments would make the necessary change.

#### FISCAL IMPACT

##### Departmental Costs

This bill would not significantly impact the department's costs.

##### Tax Revenue Estimate

The fiscal effect of this bill is indeterminable. Based on the available information on the number of cases where imprisoned individuals have been found factually innocent, it is estimated that the revenue impact of this bill would be negligible, less than \$100,000 annually.

#### BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 1799  
As Amended March 6, 2000

AMENDMENT 1

On page 2, after line 21, insert:

SEC. 2. Section 17157 is added to the Revenue and Taxation Code to read:

17157. Gross income shall not include any amount received in any taxable year by a claimant pursuant to Section 4904 of the Penal Code.